

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503159

PEGGY PREDDY, EMPLOYEE	CLAIMANT
H & L POULTRY, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JUNE 8, 2007

Submitted on the record in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

ISSUES

This case was submitted on the record in lieu of a full hearing to determine the claimant's entitlement to payment of permanent partial disability benefits for anatomical impairment and attorney's fees.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on February 3, 2005 at which time the claimant sustained a compensable scheduled injury at a compensation rate of \$269.00/\$202.00. Medical expenses, temporary total disability benefits and some permanent partial disability benefits have been paid although no exact rating has been accepted. This claim has been the subject of a previous hearing with an Opinion filed June 29, 2006.

The claimant contends she is entitled to a 16% rating to the upper extremity as assessed by Dr. Clark in his report of October 3, 2006. The claimant contends the rating is controverted and attorney's fees are owed.

The respondents contend Dr. Clark's rating does not conform to the AMA Guidelines and is invalid. They contend the rating has not been controverted because indemnity benefits are being paid while they seek clarification of the rating.

The following were submitted without objection and comprise the evidence of record: The parties' prehearing questionnaires and exhibits along with the claimant's correspondence of January 25, 2007, February 16, 2007, February 22, 2007, and March 6, 2007, incorporated by reference is the previous hearing transcript of April 7, 2006 along with the Commission's prehearing order of January 10, 2007, correspondence of March 2, 2007 and Opinion of June 29, 2006.

The claimant, age 52 (D.O.B. January 27, 1955) injured her right arm cutting, splitting and skinning poultry. Dr. Charles Clark performed surgery for carpal tunnel (March 17, 2005). A second surgery was performed for an extended carpal tunnel release, cubital tunnel release, right long and ring finger trigger release. The claimant's symptoms persisted and Dr. Clark diagnosed reflex sympathy dystrophy.

Dr. Clark assessed a 16% rating which the respondents refused to pay although they did initiate permanent partial disability benefits.

MEDICAL EVIDENCE

Orthopaedic surgeon, Dr. Charles Clark, initially assessed a 0% rating to the upper extremity which he changed to 16% in a report dated October 3, 2006. In his letter of January 26, 2007, Dr. Clark explained that he based the rating on a valid Functional Capacity Evaluation (FCE) indicating

50% strength deficit and his physical examination of the claimant indicating “persistent hyper-sensitivity with light touch” and “persistent slight pain”, (emphasis added). The claimant was assessed work restrictions of lifting no more than 20 pounds.

Dr. Clark further explained that he initially released the claimant to return to work without a rating in the hopes that physical activity would improve her symptoms of Reflex Sympathetic Dystrophy (RSD).

In assessing the anatomical impairment rating, Dr. Clark referred to Tables 16-3, 16-10 and 16-15 of the 4th Edition of the AMA Guides. The upper extremity is covered in Chapter 3 of the Guides but there are no Tables designated 16-3, 16-10 or 16-15, so it is unclear how Dr. Clark arrived at the rating of 16% to the upper extremity.

The respondents did make a good faith effort to clarify the rating but Dr. Clark provided no specifics.

FINDINGS AND CONCLUSIONS

Under Arkansas law, the claimant has the burden of proving anatomical impairment. Johnson v. American Pulpwood Co., 38 Ark. App. 6, 826 S.W.2d 827 (1992). Pursuant to Ark. Code Ann. §11-9-704(c)(1)(B), “the existence or extent of physical impairment shall be supported by objective and measurable physical ... findings.” It is the Commission’s duty to evaluate the medical evidence and determine if the permanent impairment is supported by objective and measurable findings. Reader v. Rheem Mfg. Co., 38 Ark. App. 248, 832 S.W.2d 505 (1992).

Impairment must be assessed in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Commission Rule 34. Although the Guides “strongly discourage the use of any but the most recent edition (p. 5), the Commission recognizes only the 4th edition issued in 1993.

The AMA Guides stress that a physician assesses “impairment” (an alteration in physical health) while the Commission determines “disability” (loss of earning capacity due to injury, age, education and work experience). The Court has held, however, that the Commission may also determine anatomical impairment. Pollard v. Meridian Aggregate, 88 Ark. App. 1, 193 S.W.3d 738 (2004).

According to the Guides, the patient’s grip strength can be measured using a Jamar dynamometer or a sphygmomanometer. The measurements are then plugged into a formula to calculate impairment according to Tables 31-34 (p. 64-65). The claimant’s FCE results (in the hearing transcript) do not provide the specific measurements for grip strength. Dr. Clark commented that the claimant had lost 50% of her strength which is equivalent to a 20% rating according to Table 34 on p. 65 of the Guides.

However, the Guides also explain that strength tests can be “influenced by subjective factors” and are considered a secondary rating to peripheral nerve or degenerative neuromuscular damage, (p. 64).

The condition of RSD is characterized by “pain, swelling, stiffness and discoloration”, (p. 56). The diagnosis may be confirmed by “a three-phase nucleotide flow study, cold stress testing, recurrence of pain after successful stellate ganglion blocks or Bier blocks (p. 56). Ratings for RSD are calculated using Table 11a and 12a for nerve disorders (p. 48-49). Dr. Clark does not identify any observable symptoms (such as swelling or discoloration) and his rating based on “pain” and “sensitivity” are subjective responses under the control of the patient.

I would certainly expect a patient with extensive surgical procedures (and resulting scar tissue) to her dominant hand to have permanent physical impairment, however, a rating based on

strength tests and subjective symptoms is not objective criteria and therefore I am constrained to find that the rating is invalid. I find nothing in the FCE report or Dr. Clark's records that would allow the Commission to independently assess impairment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on February 3, 2005 at which time the claimant sustained a compensable scheduled injury.
2. Dr. Clark's rating of 16% for RSD is based on subjective responses for strength, pain, and sensitivity under the control of the patient and is therefore invalid.
3. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

This claim for permanent partial disability benefits is hereby denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge